

FORM TO BE USED BY PRISONERS IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. § 1983

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
DIVISION

FILED
U.S. DISTRICT COURT
EASTERN DISTRICT ARKANSAS

MAR 14 2013

CASE NO. _____

JAMES W. McCORMACK, CLERK
By: BD DEP. CLERK

I. Parties

5:13cv00087 DPM/BD

In item A below, place your name in the first blank and place your present address in the second blank. Do the same for additional plaintiffs, if any.

A. Name of plaintiff: Malcom Brumley
ADC# 153126

Address Cummins unit P.O. Box 500 Grady, AR 71644

Name of plaintiff: _____
ADC# _____

Address _____

This case assigned to District Judge Marshall
Name of plaintiff: and to Magistrate Judge Deere
ADC# _____

Address _____

In Item B below, place the full name of the defendant in the first blank, his official position in the second blank, his place of employment in the third blank, and his address in the fourth blank.

B. Name of defendant: Gaylon Lay

Position: warden

Place of employment: Cummins unit

Address: P.O. Box 500 Grady, AR 71644

Name of defendant: Dr. Moore

Position: unit medical provider

Place of Employment: Cummins unit

Address: P.O. Box 500 Grady, AR 71644

Name of defendant: Mrs. Austin

Position: medical Director

Place of Employment: Cummins unit

Address: P.O. Box 500 Grady, AR 71644

Name of defendant: Mrs. Matthews

Position: medical Director Assistant

Place of Employment: Cummins unit

Address: P.O. Box 500 Grady, AR 71644

II. Are you suing the defendants in:

- ☐ official capacity only
☐ personal capacity only
☒ both official and personal capacity

III. Previous Lawsuits

- A. Have you begun other lawsuits in state or federal court dealing with the same facts involved in this action?

Yes _____ No ✓

- B. If your answer to A is yes, describe each lawsuit in the space below. (If there is more than one lawsuit, describe the additional lawsuits on another piece of paper, using the same outline.)

- ☐ Parties to previous lawsuit

Plaintiffs: _____

Defendants: _____

- ☐ Court (if federal court, name the district; if state court, name the county): _____

- ☐ Docket Number: _____

- ☐ Name of judge to whom case was assigned: _____
- ☐ Disposition (for example: Was the case dismissed? Was it appealed? Is it still pending? _____
- ☐ Approximate date of filing lawsuit: _____
- ☐ Approximate date of disposition: _____

IV. Place of present confinement: Commins unit A.D.C.

V. At the time of the alleged incident(s), were you:
(check appropriate blank)

_____ in jail and still awaiting trial on pending criminal charges

☒ _____ serving a sentence as a result of a judgment of conviction

_____ in jail for other reasons (e.g., alleged probation violation, etc.)
explain: _____

VI. The Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e, requires complete exhaustion of administrative remedies of all claims asserted, prior to the filing of a lawsuit. There is a prisoner grievance procedure in the Arkansas Department of Correction, and in several county jails. Failure to complete the exhaustion process provided as to each of the claims asserted in this complaint may result in the dismissal without prejudice of all the claims raised in this complaint.

A. Did you file a grievance or grievances presenting the facts set forth in this complaint?

Yes ☒ _____ No _____

B. Did you completely exhaust the grievance(s) by appealing to all levels within the grievance procedure?

Yes ☒ _____ No _____

If not, why? _____

①

VII. Statement of Claim

State here as briefly as possible the facts of your case. Describe how each defendant is involved. Include also the names of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. (Use as much space as you need. Attach extra sheets if necessary.)

Plaintiff Malcom Brumley #153126 at the Cummins unit (ADC)
claims Deliberate Indifference when each defendant's Gaylon
Lay - warden and Dr. Moore unit medical provider and Mrs.
Austin medical Director and Mrs. Matthews Assistant
medical Director Delayed Access to medical Treatment to a
Serious medical need and Interfering with the medical
Judgment from Dr. Ngo eye specialist at (UAMS) for
Follow-up Treatment with the ophthalmology each Defendant's
Gaylon Lay, Dr. Moore, Mrs. Austin and Mrs. Matthews all
is responsible to make sure that I go to the follow-up
appointment Gaylon Lay warden is responsible for all
transfer to outside medical care and Mrs. Austin - medical
director is responsible for arranging for specialized care
outside prison and Mrs. Matthews Assistant medical director
is also responsible For arrangeing outside medical care now
Dr. Moore is medical provider he review all clinic notes
for Follow-up appointment The failure and Delay of defendant's to
provide the Follow-up examination and treatment of his serious medical

Malay Boudy

eye infection with the ophthalmology constitutes deliberate indifference to the plaintiff's serious medical need in violation of the Eighth Amendment to the United States Constitution.

Facts That leads up to the Delay to Treatment to a serious medical need and the interfering with the medical Judgment for follow-up with the ophthalmology Dr. Ngo. eye specialist at the (UAMS) ER.

On 11-12-2012 I was seen by sick call for an eye infection and pain and redness I received chlorphen and APAP tablets and liquid Tear Drops For Two (2) days as perscribed Two days later I was in pain and unable to see my eye was Swollen shut and hurting so bad so I put in another sick call and was not seen until 11-22-2012 by Dr. Moore he said he did not know what was the problem with my eye and said that he did not have the proper eye quipment to diagnosis are make a determination to treat my eye infection so Dr. Moore Sent me to (UAMS) ER on 11-21-2012 on a wednesday regarding my eye. while at (UAMS) I had a CT of the orbits, B Scan and lab work. Dr. Ngo (UAMS) eye specialist noted that you had anterior scleritis and uveitic glaucoma of the right eye and recommended daily treatment and to follow-up the following Tuesday (November 27) I returned back to the unit late that night and the nurse noted that I were given the recommended drops while at (UAMS) and that she would report the ~~no~~ findings to the unit MD. December 8,

③

Mahony Brumby

I was seen in sick call inquiring about my follow-up and the nurse noted she spoke with Mrs. Crompton who advised that I did have an appointment with the outside provider and that she was referring you to the unit provider.

December 11, I were seen by Mr. Simmons, APRN, who ordered the recommended eye drops and referred you to Dr. Moore regarding the follow-up with the ophthalmology.

December 14, I were seen by Dr. Moore, who noted that I received a glaucoma handout from (VAMS); However my clinic notes has not been reviewed by the unit provider nor have I been seen unit I filed the Grievance on 12-17-12 step one and step two on 12-21-12

and I got a response on 12/28/12 saying it was untimely so I filed an Appeal 1-1-2013 and I got and a Responses back from the Director of (ADC) 2/11/13 Grievance # CU-12-03179

were it say Due to the Delay in your records from (VAMS) being reviewed by the unit provider, this appeal was found with merits

VIII. Relief

State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.

Award Compensatory damages in the Amount of \$500,000.00

Award Punitive damages in the Amount of \$500,000.00

Emotional Damages in the Amount of \$500,000.00

Award any other Damages the court may find for the Plaintiff

Plaintiff Demands that A Jury Trial be held on all claims

I declare under penalty of perjury (18 U.S.C. § 1621) that the foregoing is true and correct.

Executed on this 10 day of March, 2013.

Mahony Brennan

(Signature(s) of plaintiff(s))

UNIT LEVEL GRIEVANCE FORM (Attachment I)Unit/Center CumminsName Malcom BrumleyADC# 153126 Brks # MS Job Assignment Field Major12-17-12 (Date) STEP ONE: Informal Resolution12-21-12 (Date) STEP TWO: Formal Grievance (All complaints/concerns should first be handled informally.)If the issue was not resolved during Step One, state why: I still have not been to my follow-up appointment + am still in pain + Can't see out of my right eye.

(Date) EMERGENCY GRIEVANCE (An emergency situation is one in which you may be subject to a substantial risk of physical harm; emergency grievances are not for ordinary problems that are not of a serious nature). If you marked yes, give this completed form to the designated problem-solving staff, who will sign the attached emergency receipt. If an Emergency, state why: _____

Is this Grievance concerning Medical or Mental Health Services? yes If yes, circle one: medical or mental**BRIEFLY** state your one complaint/concern and be specific as to the complaint, date, place, name of personnel involved and how you were affected. (Please Print): on 11-12-2012 I was seen by SickCall [redacted] For my Eye. Which was Red & Infected. For Treatment I Received Chlorphen + APAP Tablets Along With a bottle of liquid tears. I APPLIED the Treatment AS Prescribed, Then 2 days Later was unable to see because my Eye was Infected And Swollen Shut. I Filled out Another Sick Call and was seen on 11-22-12 By DR Moore. he stated he did not know what the problem with my Eye was cause he did not have the proper tool to look At my Eye, he told me to try Neomycin And Polymycin B sulfates And Gramicidin Ophthalmic Solution usp. I APPLIED it AS directed. Then on 11-23-12 DR Moore sent me to UAMS ER, I was seen And They done several Tests. Then was seen By the Eye Specialist she gave me Prednisolone & Cyclogyl Drops and said to take them Along With 1000mg Naproxin. And I was to Return to see her the following week. I've still Not been Back and my Eye hurts And I'm in severe Pain. I was told There was Not Even Anything in my Jacket About me going to UAMS on 11-23-12Malcom Brumley
Inmate Signature12-17-12
Date

JAN 3 2013

If you are harmed/threatened because of your use of the grievance process, report it immediately to the Warden or designee.**THIS SECTION TO BE FILLED OUT BY STAFF ONLY**This form was received on 12-18-12 (date), and determined to be Step One and/or an Emergency Grievance (Yes or No). This form was forwarded to medical or mental health? Yes (Yes or No). If yes, name of the person in that department receiving this form: Matthew B. AndrewsPRINT STAFF NAME (PROBLEM SOLVER) Matthew B. Andrews ID Number 88797 Staff Signature [Signature] Date 12-18-12Describe action taken to resolve complaint, including dates: I spoke to Mr. Moore. He states, He has gotten with me today and requested our notes from The UAMS ER, Records, Did not come back with you.Staff Signature & Date Returned [Signature] 12-21-12 Inmate Signature & Date Received Malcom Brumley 12-21-12This form was received on _____ (date), pursuant to Step Two. Is it an Emergency? _____ (Yes or No).

Staff Who Received Step Two Grievance: _____ Date: _____

Action Taken: _____ (Forwarded to Grievance Officer/Warden/Other) Date: _____

If forwarded, provide name of person receiving this form: _____ Date: _____

DISTRIBUTION: YELLOW & PINK – Inmate Receipts; **BLUE**-Grievance Officer; **ORIGINAL**-Given back to Inmate After Completion of Step One and Step Two.

IGTT400
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Attachment II

ACKNOWLEDGMENT OR REJECTION OF UNIT LEVEL GRIEVANCETO: Inmate Brumley, Malcom
FROM: Mizell, Jimmy E
DATE: 12/28/2012ADC #: 153126A
TITLE: ADC Inmate Grievance Coord
GRIEVANCE #: CU-12-03179Please be advised, I have received your Grievance dated 12/17/2012 on 12/28/2012.
Your grievance was rejected as either non-grievable, untimely, duplicative, frivolous, or vexatious.

Signature of ADC Inmate Grievance Coord*Cur Mod
mucos/mucos***CHECK ONE OF THE FOLLOWING**

- ☐ This Grievance will be addressed by the Warden/Center Supervisor or designee.
- ☐ This Grievance is of a medical nature and has been forwarded to the Health Services Administrator who will respond.
- ☐ This Grievance involves a mental health issue and has been forwarded to the Mental Health Supervisor who will respond.
- ☐ This Grievance has been determined to be an emergency situation, as you so indicated.
- ☐ This Grievance has been determined to not be an emergency situation because you would not be subject to a substantial risk of personal injury or other serious irreparable harm. Your Grievance will be processed as a Non-Emergency.
- ☒ This Grievance was REJECTED because it was either non-grievable (), untimely, was a duplicate of , or was frivolous or vexatious.

RECEIVED-DEPUTY DIRECTOR
ARKANSAS DEPARTMENT
OF CORRECTION

JAN 3 2013

INMATE'S APPEAL

If you disagree with a rejection, you may appeal this decision within five working days by filling in the information requested below and mailing it to the appropriate Chief Deputy/Deputy/Assistant Director. Keep in mind that you are appealing the decision to reject the original complaint. Address only the rejection; do not list additional issues, which were not a part of your original grievance as they will not be addressed. Your appeal statement is limited to what you write in the space provided below.

JAN 3 2013

Malcom Brumley 153126 1-1-2013
Inmate Signature ADC # Date

HEALTH & CORRECTIONAL PROGRAMS

I recieved my initial grievance from the infirmary on 12/21/2012. On that same day, I filled out step two on that same grievance and asked C/O Harris if I could get it signed and dated so that I could proceed with step two of the grievance process. C/O Harris told me I didn't need a signature and that all I had to do was place the grievance in the proper box. So on 12/21/2012, I placed the grievance in the proper box. Seven days later, on 12/28/2012, I recieved this rejection letter and my grievance. I was not untimely. I was misinformed.

IGTT430
3GD

Attachment VI

INMATE NAME: Brumley, Malcom

ADC #: 153126

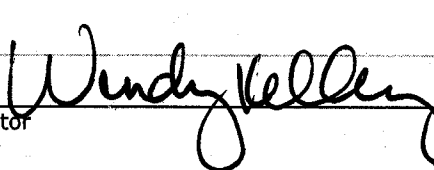
GRIEVANCE#: CU-12-03179

On December 17, 2012, you grieved that you were sent to UAMS ER in November due to an infection in your eye and the eye specialist advised that you would need to come back the following week, but you have yet to go back. You state that you were advised on November 23 that there wasn't even anything in your medical record from your visit to UAMS. You state that your eye hurts and you need to be seen for the follow up.

Your grievance was rejected at the unit level due to it being untimely; however, you appealed the rejection and stated that you put the grievance in the grievance box on December 21 like you were told.

According to your medical record, you were sent to UAMS ER on November 21, 2012 (Wednesday) regarding your eye. While at UAMS, you had a CT of the orbits, B scan and lab work. Dr. Ngo (UAMS) noted that you had anterior scleritis and uveitic glaucoma of the right eye and recommended Naproxen 500 mg twice daily, Cyclogyl gtts three times daily, Pred forte gtts every two hours (both drops for right eye) and to follow up the following Tuesday (November 27). You returned to the unit late that night and the nurse noted that you were given the recommended drops while at UAMS and that she would report the findings to the unit MD. December 8, you were seen in sick call inquiring about your follow up and the nurse noted that she spoke with Mrs. Crompton who advised that you did have an appointment with the outside provider and that she was referring you to the unit provider. December 11, you were seen by Mr. Simmons, APN, who ordered the recommended eye drops and referred you to Dr. Moore regarding the follow up with ophthalmology. December 14, you were seen by Dr. Moore who noted that you received a glaucoma handout from UAMS; however, there were no clinic notes or orders for medication noted and that he was going to get with Mrs. Crompton to obtain the clinic notes from UAMS. A review of your medical record indicates that your records from UAMS have not been reviewed by the unit provider nor have you been seen for the follow up as recommended. My staff spoke with your unit medical department regarding this issue and requested that a provider review the records from UAMS, document their treatment plan and implement that treatment plan.

Due to the delay in your records from UAMS being reviewed by the unit provider; I find this appeal with merit.


Director

2/11/13
Date